



National Aeronautics and  
Space Administration  
Washington, DC 20546

# Procurement Notice

**PN 04-01**  
**December 29, 2004**

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## **ORDERING PERIODS AND PERFORMANCE PERIODS UNDER TASK AND DELIVERY ORDER CONTRACTS**

**BACKGROUND:** Section 843 of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108-136) amended the general authority for task and delivery order contracts at 10 U.S.C. 2304a to specify that task or delivery order contracts awarded under the authority of that section may cover a total period of not more than 5 years, including all options or modifications. This limitation applied to contracts awarded by NASA, DOD, and the Coast Guard. PIC 04-09, dated April 9, 2004, implemented this statutory limitation.

Section 813 of the National Defense Authorization Act for Fiscal Year 2005 amends and supersedes the Section 843 limitation. Under this latter statute, task and delivery order contracts may be for any period up to five years, and this period may be subsequently extended for one or more successive periods pursuant to an option or contract modification. However, in no case may the ordering period exceed a total of ten years unless approved by the Deputy Chief Acquisition Officer.

This PN implements the revised statute by adding subsection 1816.505-71. It also adds subsection 1816.505-72 to specify the limitations on order performance periods that were included in PIC 04-09.

**ACQUISITIONS AFFECTED BY CHANGES:** The ordering period limitations in 1816.505-71 apply to all NASA task and delivery order contracts except advisory and assistance service task order contracts, definite quantity contracts, and multi-agency contracts awarded by agencies other than NASA, DoD, or the Coast Guard. The performance period limitations apply to all NASA task and delivery order contracts.

**ACTION REQUIRED BY CONTRACTING OFFICERS:** Request deviations under 1817.204(e)(iii) for task and delivery order contracts that contemplate an ordering period of greater than five years.

**CLAUSE CHANGES:** None.

**PARTS AFFECTED:** Parts 1816 and 1817.

**REPLACEMENT PAGES:** You may use the enclosed pages to replace 16:1, 16:2, 16:11, 16:12, 16:13, 16:14, 17:1, and 17:2 of the NFS.

**TYPE OF RULE AND PUBLICATION DATE:** Not Applicable. NFS 1817.204 already establishes a five year limitation on all NASA contracts, and this change conforms to that policy. Accordingly, this change does not have a significant effect beyond the internal operating procedures of the Agency or have a significant cost or administrative impact on contractors or offerors, and therefore does not require codification in the Code of Federal Regulations (CFR) or publication for public comment.

**CANCELLATION:** PIC 04-09 is cancelled.

**HEADQUARTERS CONTACT:** Tom O'Toole, Contract Management Division (ID010), (202) 358-0478, email: thomas.otoole@nasa.gov.

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Tom Luedtke  
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**DISTRIBUTION:**  
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## **PART 1816**

### **TYPES OF CONTRACTS**

#### **Subpart 1816.1--Selecting Contract Types**

##### **1816.104 Factors in selecting contract types.**

###### **1816.104-70 Contract type for performance-based contracting (PBC).**

(a) PBC is defined in FAR 2.101 and discussed in FAR 37.6. Although FAR Part 37 primarily addresses services contracts, PBC is not limited to these contracts. PBC is the preferred way of contracting for all supplies and services at NASA. Generally, when contract performance risk under a PBC specification can be fairly shifted to the contractor to allow for the operation of objective incentives, a contract type with objectively measurable incentives (e.g., FFP, FPIF, or CPIF) is appropriate. However, when contractor performance (e.g., cost control, schedule, or quality/technical) is best evaluated subjectively using quantitative measures, a CPAF contract may be used.

(b) A PBC is a completion form of contract (something is accomplished). Term/level-of-effort, time-and-materials and labor hour contracts are not PBC.

#### **Subpart 1816.2--Fixed-Price Contracts**

##### **1816.202 Firm-fixed-price contracts.**

###### **1816.202-70 NASA contract clause.**

The contracting officer shall insert the clause at 1852.216-78, Firm-Fixed-Price, in firm-fixed-price solicitations and contracts. Insert the appropriate amount in the resulting contract.

##### **1816.203 Fixed-price contracts with economic price adjustment.**

###### **1816.203-4 Contract clauses.**

(a) In addition to the approval requirements in the prescriptions at FAR 52.216-2 through 52.216-4, the contracting officer shall coordinate with the installation's Deputy Chief Financial Officer (Finance) before exceeding the ten-percent limit in paragraph (c)(1) of the clauses at FAR 52.216-2 and 52.216-3 and paragraph (c)(4) of the clause at 52.216-4.

(d)(2) Contracting officers shall contact the Office of Procurement, Code HK, for specific guidance on preparing clauses using cost indexes. Such clauses require advance approval by the

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Assistant Administrator for Procurement. Requests for approval shall be submitted to the Headquarters Office of Procurement (Code HS).

factor is 80, the weighted technical score is 48 (80 x 60 percent). The weighted scores for each evaluation factor are then added to determine the total award fee score.

**1816.405-276 Award fee payments and limitations.**

(a) *Interim Award Fee Payments.* The amount of an interim award fee payment (see 1816.405-273(b)) is limited to the lesser of the interim evaluation score or 80 percent of the fee allocated to that interim period less any provisional payments (see paragraph (b) of this subsection) made during the period.

(b) *Provisional Award Fee Payments.* Provisional award fee payments are payments made within evaluation periods prior to an interim or final evaluation for that period. Provisional payments may be included in the contract and should be negotiated on a case-by-case basis. For a service contract, the total amount of award fee available in an evaluation period that may be provisionally paid is the lesser of a percentage stipulated in the contract (but not exceeding 80 percent) or the prior period's evaluation score. For an end item contract, the total amount of provisional payments in a period is limited to a percentage not to exceed 80 percent of the prior interim period's evaluation score.

(c) *Fee Payment.* The Fee Determination Official's rating for both interim and final evaluations will be provided to the contractor within 45 calendar days of the end of the period being evaluated. Any fee, interim or final, due the contractor will be paid no later than 60 calendar days after the end of the period being evaluated.

**1816.406 Contract clauses.****1816.406-70 NASA contract clauses.**

(a) As authorized by FAR 16.406(e), the contracting officer shall insert the clause at 1852.216-76, Award Fee for Service Contracts, in solicitations and contracts when an award-fee contract is contemplated and the contract deliverable is the performance of a service.

(b) As authorized by FAR 16.406(e), the contracting officer shall insert the clause at 1852.216-77, Award Fee for End Item Contracts, in solicitations and contracts when an award fee contract is contemplated and the contract deliverables are hardware or other end items for which total contractor performance cannot be measured until the end of the contract. When the clause is used in a fixed-price award-fee contract, it shall be modified by deleting references to base fee in paragraphs (a), and by deleting paragraph (c)(1), the last sentence of (c)(4), and the first sentence of (c)(5).

(c) The contracting officer may insert a clause substantially as stated at 1852.216-83, Fixed Price Incentive, in fixed-price-incentive solicitations and contracts utilizing firm or successive targets. For items subject to incentive price revision, identify the target cost, target profit, target price, and ceiling price for each item.

(d) The contracting officer shall insert the clause at 1852.216-84, Estimated Cost and Incentive Fee, in cost-plus-incentive-fee solicitations and contracts.

(e) The contracting officer may insert the clause at 1852.216-85, Estimated Cost and Award Fee, in award-fee solicitations and contracts. When the contract includes performance incentives, use Alternate I. When the clause is used in a fixed-price award fee contract, it shall be modified to delete references to base fee and to reflect the contract type.

(f) As provided at 1816.402-270, the contracting officer shall insert a clause substantially as stated at 1852.216-88, Performance Incentive, when the primary deliverable(s) is (are) hardware and total estimated cost and fee is greater than \$25 million. A clause substantially as stated at 1852.216-88 may be included in lower dollar value hardware contracts with the approval of the procurement officer.

### **Subpart 1816.5--Indefinite-Delivery Contracts**

#### **1816.504 Indefinite quantity contracts.**

(a)(4)(ii) ID/IQ service contract values and task order values shall be expressed only in dollars.

(a)(4)(v) See 1815.7003.

#### **1816.505 Ordering.**

(a) (2) Task and delivery orders shall be issued by the contracting officer.

(b)(5) The Agency and installation ombudsmen designated in accordance with 1815.7001 shall review complaints from contractors on task order contracts and delivery order contracts.

#### **1816.505-70 Task ordering.**

(a) The contracting officer shall, to the maximum extent possible, state task order requirements in terms of functions and the related performance and quality standards such that the standards may be objectively measured.

(b) To the maximum extent possible, contracting officers shall solicit contractor task plans to use as the basis for finalizing task order requirements and enable evaluation and pricing of the contractor's proposed work on a performance based approach as described in 1816.104-70(a).

(c) Task order contract type shall be individually determined, based on the nature of each task order's requirements.

(1) Task orders may be grouped by contract type for administrative convenience (e.g., all CPIF orders, all FFP orders, etc.) for contractor progress and cost reporting.

(2) Under multiple awards, solicitations for individual task plans shall request the same pricing structure from all offerors.

(d) Any undefinitized task order issued under paragraph (f) of the clause at 1852.216-80, Task Ordering Procedure, shall be treated and reported as an undefinitized contract action in accordance with 1843.70.

#### **1816.505-71 Task and delivery order contract ordering period.**

(a) 10 U.S.C. 2304a establishes limitations on the ordering period of a task or delivery order contract awarded by NASA. The statute specifies that the ordering period may be for any period up to five years. This period may be subsequently extended for one or more successive periods pursuant to an option or contract modification. In no case may the ordering period exceed a total of ten years unless approved by the Deputy Chief Acquisition Officer.

(b) The deviation requirement at 1817.204(e)(iii) applies to a task or delivery contract with an ordering period of more than five years.

(c) Orders under GSA Federal Supply Schedule contracts must comply with the limitations in paragraph (a) of this subsection if the orders provide for the issuance of subsequent task or delivery orders.

(d) The limitations in paragraph (a) of this subsection do not apply to --

(1) Advisory and assistance service task order contracts (authorized by 10 U.S.C. 2304b). These contracts are limited by statute to 5 years, with the authority to extend an additional 6 months (see FAR 16.505(c));

(2) Definite quantity contracts; and

(3) Multi-agency contracts awarded by agencies other than NASA, DoD, or the Coast Guard.

**1816.505-72 Task and delivery order contract performance periods.**

(a) Performance of orders placed within the contract ordering period may extend for up to one year past the end of the ordering period if the contracting officer determines that performance of the order cannot reasonably be deferred to any planned follow-on contract.

(b) Orders that require performance of more than one year past the end of the ordering period must be approved by the Deputy Chief Acquisition Officer prior to issuance. Centers shall submit approval requests, with full rationale for the necessity of placing the order, to Code HS at least two weeks before the planned issuance of the order.

**1816.506-70 NASA contract clause.**

Insert the clause at 1852.216-80, Task Ordering Procedure, in solicitations and contracts when an indefinite-delivery, task order contract is contemplated. The clause is applicable to both fixed-price and cost-reimbursement type contracts. If the contract does not require 533M reporting (see NPR 9501.2, NASA Contractor Financial Management Reporting), use the clause with its Alternate I.

**Subpart 1816.6--Time-and-Materials, Labor-Hour, and Letter Contracts**

**1816.603 Letter contracts.**

**1816.603-2 Application.**

(a) Centers must ensure that NASA liabilities and commitments are minimized under letter contracts. When a letter contract is justified and program requirements can be severed into smaller, discreet efforts, the work authorized by the letter contract must be limited to the minimum severable effort required to satisfy the urgent program requirements. The remaining requirements may not be initially included in the letter contract and must be acquired through a separate fully priced and definitized contract action.

**1816.603-370 Approvals.**

(a)(1) The approval authority to issue a letter contract is --

(i) The Assistant Administrator for Procurement when the estimated value of the definitized contract is equal to or greater than the Master Buy Plan (MBP) submission threshold of 1807.7101;

(ii) The procurement officer when the estimated value of the definitized contract is below the MBP submission threshold; and

(iii) The Assistant Administrator for Procurement for any modification of an undefinitized letter contract approved by the procurement officer that increases the estimated



value of the definitized contract to an amount equal to or above the MBP submission threshold. This approval must be obtained prior to issuing the modification.

(2) The procurement officer must sign all requests for approval by the Assistant Administrator for Procurement and submit them to Code HS.

(b) All requests for authority to issue a letter contract must include the following:

- (1) Contractor name and address.
- (2) Place of performance.
- (3) Contract number, including modification number, if applicable.
- (4) Brief description of the work or services to be performed.
- (5) Performance period or delivery schedule for both the letter contract and definitized contract.
- (6) Estimated value of the work authorized by the letter contract.
- (7) Estimated value of the definitized contract.
- (8) Contract type of the definitized contract.
- (9) A statement that the definitized contract will contain all required clauses or identification of approved specific clause deviations.
- (10) Complete justification of the necessity for the letter contract, including the advantages to the Government and a description of the efforts to avoid its issuance or to minimize its scope.
- (11) The definitization schedule described in FAR 16.603-2(c) expected to be negotiated with the contractor.

**PART 1817**  
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**PART 1817**  
**SPECIAL CONTRACTING METHODS**

**Subpart 1817.1--Multiyear Contracting**

**1817.105 Policy.**

**1817.105-1 Uses.**

(b) The Assistant Administrator for Procurement (Code HS) is the approval authority for the use of the multiyear contracting technique. Requests for approval shall be signed by the procurement officer and shall include a description of the acquisition, identification of anticipated contract costs and funding, and a determination, with supporting rationale, that each of the criteria in FAR 17.105-1(b) is met by the proposed use of multiyear contracting.

**Subpart 1817.2--Options**

**1817.200 Scope of subpart.**

FAR Subpart 17.2 applies to all NASA contracts.

**1817.203 Solicitations.**

(g)(2) The procurement officer is authorized to approve option quantities greater than 50 percent.

**1817.204 Contracts.**

(e)(i) The 5-year limitation (basic plus option periods) applies to all NASA contracts regardless of type and other procurement award instruments. This includes agreements (e.g. basic ordering agreements, blanket purchase agreements), interagency acquisitions, and orders placed under agreements or awarded under a Federal Supply Schedule or other indefinite delivery/indefinite quantity contracts awarded by other agencies. See 1816.505-71 for limitations on the ordering period of task and delivery order contracts.

(ii) When the performance period exceeds 5 years (exclusive of options), the program/project office and the contracting officer shall review the requirement at the mid-point of the performance period to ensure that the products or services continue to fulfill NASA's mission needs and that the procurement award instrument continues to provide the best means of satisfying the requirement.

(iii) Requests for deviations from the 5-year limitation policy shall be sent to the Assistant Administrator for Procurement (Code HS) and shall include justification for exceeding five